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OFFICE OF THE  
EXECUTIVE SECRETARY

May 29, 2002

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: Docket to Establish Generic Performance Measurements,  
Benchmarks and Enforcement Mechanisms for BellSouth  
Telecommunications, Inc.  
Docket No. 01-00193

Dear Mr. Waddell:

Please find enclosed the original and thirteen copies of a Motion for Clarification and Reconsideration filed on behalf of members of the CLEC Coalition in the above-captioned docket. Copies have been forwarded to parties of record.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

HW/nl  
Attachment  
c: Parties

RECEIVED

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

In Re: Docket to Establish Generic                     )  
Performance Measurements, Benchmarks        ) Docket No. 01-00193  
and Enforcement Mechanisms for                )  
BellSouth Telecommunications, Inc.            )

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**CLEC COALITION MOTION FOR  
CLARIFICATION/RECONSIDERATION**

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The CLEC Coalition, consisting of AT&T Communications of the South Central States, Inc. ("AT&T"), Access Integrated Networks, Inc. ("AIN"), TCG MidSouth, Inc. ("TCG"); MCI WorldCom Communications, Inc., ("WorldCom"); DIECA Communications d/b/a Covad Communications Corporation ("Covad"); and Time Warner Telecom of the MidSouth, LP ("Time Warner") hereby files its Motion for Clarification in this docket.

On May 14, 2002, the Authority issued its final Order in this matter. The CLEC Coalition strongly supports the Order and believes that, generally, the performance plan adopted by the Authority will significantly advance the intended goal of providing sufficient incentive for BellSouth Telecommunications, Inc. ("BellSouth") to meet its obligations to provide CLECs with service at parity with that it provides itself and to open its local markets to competition. The CLEC Coalition greatly appreciates the Authority's hard work on this complex matter.

Despite the Coalition's strong support for the Authority's Order in this matter, there is one issue the Authority should clarify or reconsider. In its Order, the Authority states that:

5. The Authority shall retain an independent third party auditor to conduct annual audits of the data gathering and collection process adopted herein. BellSouth shall pay fifty percent (50%) of the cost of the audit and the remaining costs shall be divided equally among the other parties to this action. Order at p. 33.

The Coalition agrees that annual audits are necessary to verify the integrity of BellSouth's performance reporting but the cost of these audits – as recent decisions in other states confirm – are more appropriately borne by BellSouth alone.

Within the BellSouth region alone, the Florida and North Carolina commissions have recently ordered BellSouth to pay for such audits itself. As the North Carolina Commission stated in its May 22, 2002 order in Docket No. P-100, Sub 133K, p. 9, paragraph (a): "Since the audits are an integral part of a performance measurement plan designed to ensure BellSouth's compliance with the Act, BellSouth will be responsible for the full cost of these audits." Similarly, in Docket No. 000121-TP, issued September 10, 2001, p. 191, the Florida Public Service Commission found that:

There would be an inherent difficulty in determining which ALECs should bear the audit costs and the amount to collect from each. Additionally, since BellSouth controls the accuracy and validity of the performance measures, BellSouth is ultimately responsible for the outcome of the audit and, therefore the underlying costs of the audit.

BellSouth should stand behind the accuracy of its reports by backing them with annual audits, particularly during the initial years of the plan.

Likewise, other states outside the BellSouth region have required annual audits either paid for by the ILEC or by Tier II remedies paid by the ILEC. For instance, in an Order dated May 27, 1999 (Case U-11830 at p. 5), The Michigan Public Service Commission ordered a comprehensive annual audit of Ameritech Michigan's services to the CLECs and to itself. The Order did not require CLECs to pay for the annual audits.

- In an Order dated September 25, 2001 (Phase I, Case 6720-T1-160, at p. 29), the Public Service Commission of Wisconsin found that: "Ameritech shall be required to provide an independent annual audit of the accuracy of its performance measure data and the resulting remedy payments with the cost of the audit to be paid for by Ameritech."
- In an Order dated March 27, 2002 (Docket 01I-041T, Decision No. C02-399, p. 15), the Colorado Public Utilities Commission issued its Performance Assurance Plan which stated that: "Qwest shall pay for the first three audits; thereafter, the Commission shall determine whether the audits shall be paid by the Special Fund [remedies paid to state] or by Qwest."
- In an Order dated Dec. 31, 1999 (Docket P-00991643 at p. 23) the Pennsylvania Public Utility Commission concluded "that BA-PA should bear the cost of the first annual audit. At the time of our first annual review of the performance measures, we shall consider the issue of cost responsibility for subsequent audits."
- The New Jersey Commission has also required that incumbents pay at least for the first year's annual audit.
- The New York Public Service Commission has taken a more hands on approach and its staff has been replicating and performing audits of the data since Verizon-New York's Section 271 approval.

As noted above, the purpose of the audit is to ensure that BellSouth is meeting its legal obligations. Aside from the difficulty of determining which CLECs should contribute under a 50/50 plan and the extremely tight financial situation in which CLECs today find themselves, there is every reason to require BellSouth to fund these annual

audits fully. BellSouth has the market-opening requirements and has the obligation to produce reliable performance data. Accordingly, the CLEC Coalition requests that the Authority clarify that BellSouth will bear the cost of annual audits.

### CONCLUSION

The CLEC Coalition respectfully requests the Authority's consideration of this issue.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery, to the following on this the 29<sup>th</sup> day of May, 2002.

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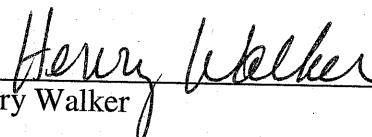
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